

COVENANT

The undersigned, _____, hereinafter referred to as the Covenantor, having submitted to the Marlborough Planning Board a definitive plan of a subdivision entitled Subdivision of Land in Marlborough, Mass. dated _____ and revised through drawn by _____ (said plan being hereinafter called the "Plan"), in accordance with the conditions of Approval as voted by the Planning Board on _____, does hereby covenant and agree with said Planning Board, pursuant to Massachusetts General Laws (Ter. Ed.) Chapter 41, Section 81-U, as amended that:

- 1.The Covenantor is the owner of record of the premises shown on the "Plan", which is to be recorded in the Middlesex South District Registry of Deeds herewith as Plan _ of 200 ____ and is referred to herein.
- 2.This Covenant shall run with the land and be binding upon the successors and assigns of the Covenantor and its successors in title to the premises shown on the "Plan".
- 3.The construction of ways and the installation of municipal services shall be provided to serve any and all lots in accordance with the applicable rules and regulations of said Planning Board before any such lot may be built upon or conveyed, other than by mortgage deed; provided, however, that a mortgagee who acquires title to the mortgaged premises or any part thereof may sell any such lot, subject only to that portion of this Covenant which provides that no lot so sold shall be built upon until such ways and services have been provided to serve such lot.
- 4.Nothing herein shall be deemed to prohibit a conveyance subject to this Covenant, by a single deed, of the entire parcel of land shown on the "Plan" or all lots not previously released by the Planning Board without first providing such ways and services. A deed of any part of the premises shown on the "Plan" in violation of any portion of the above referenced statute shall be voidable by the grantee prior to the release of the Covenant, but not later than three (3) years from the date of such deed.
- 5.The Covenantor agrees to the easements shown on the "Plan" and will grant to the City of Marlborough the easements shown. Further, the Covenantor will submit to the City Solicitor's Office a written Attorney's Certification of Title to such easements to the City of Marlborough, specifying that the Covenantor has good and marketable title to said easements and that said easements are free and clear of all encumbrances as of the time of conveyance to the City. Said Certificate shall be a required precedent to consideration by the City to accept any streets, ways, or roads as shown on the "Plan".
- 6.Prior to the release by the Planning Board of any lots shown on the "Plan" from the terms of this Covenant, the Covenantor shall deposit with the City of Marlborough a Performance Bond in an amount to be determined by the Planning Board, said bond to be secured by the posting of cash, or by surety company bond or by such other form of security as may be approved by the Planning Board. Said bond shall be to secure the performance by the Covenantor of the construction of the ways and the installation of municipal services as required by the Approval of the "Plan", within the time requirements as stipulated herein. The amount of the bond may be reduced from time to time by said Planning Board. However, due to present and anticipated future inflationary conditions, the amount of the

Performance Bond is subject to annual redetermination by the Planning Board.

7.Pursuant to Rules and Regulations of the Planning Board, Section III (B) (7) (a), as amended, such bond or security, when filed or deposited shall be reviewed as to form and manner of execution by the City Solicitor's Office, and as to sureties by the City Treasurer.

8.No lot shall be built upon until such time as it has been approved by the Marlborough Board of Health.

9.No lot shall be sold or built upon until released by the Planning Board after acceptable bonding. If at any time said bonding as required in Paragraph 6 expires, then all lot releases of lots not transferred to third party purchasers or mortgaged subsequent to release, shall be void.

10.Pursuant to Massachusetts General Laws (Ter. Ed.) Chapter 41, Section 81R, as amended, the Planning Board has not agreed to waive compliance with its Rules and Regulations, except as follows:

(List waivers, if any)

Said Planning Board has made these waivers after determining that such action is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law and with the Planning Board Rules and Regulations.

11.The construction of all ways and the installation of all municipal services shall be completed in accordance with the applicable Rules and Regulations of the Planning Board within a period of two (2) years from the date of approval of the "Plan". Failure to so complete or to obtain an extension shall automatically rescind approval of the "Plan" as to lots not yet released from this Covenant and full re-application for approval of such lots will be required.

12.Upon the proper completion of all improvements and their approval by the City Engineer, and if said improvements comply with all then applicable state laws, city ordinances, and Planning Board Rules and Regulations and requirements, the City may then, and only then, accept the improvements.

13.The Covenantor will retain ownership of the fee interest in and to all streets, ways and roads in the subdivision as shown on the "Plan" until such time as said streets, ways and roads may be accepted as public ways by the City Council of the City of Marlborough.

The Covenantor agrees to include the following paragraph in all deeds to lots within the subdivision:

"Grantor reserves to his or her benefit, the fee simple in the proposed rights-of-way within the subdivision and also reserves to his or her benefit any easements within the proposed lots of the subdivision which are shown on the "Plan". Grantor also reserves the right, upon written approval of the Planning Board, to relocate easements shown on the "Plan", within a lot, as conditions and local regulation require and permit."

14. The Covenantor shall prepare a grant of authority to the Marlborough Police Department to enforce all traffic regulations dictated by the traffic signage approved and shown on the "Plan", during the period the roads are private ways.
15. The City of Marlborough shall not be responsible for the maintenance and care of streets, ways, or roads or other improvements, until the same have been accepted. In emergency situations as determined by the City Engineer, the City of Marlborough may take steps to correct a condition(s) within the subdivision which, if not corrected, would jeopardize public health and safety. In these instances, any and all costs so incurred by the City to correct said condition(s), shall be re-imbursed to the City within thirty (30) days of notice to the Covenantor. Failure to re-imburse the City within this period of time will be considered cause to rescind approval of the subdivision "Plan".
16. All as-built plans and profiles pertaining to the above-described 'Definitive Plan of "Subdivision of Land in Marlborough, Mass."' shall be submitted to the City Engineer soon after the completion of said subdivision, the streets, ways, and roads of which will not be considered for acceptance until such plans and profiles have been approved by the City Engineer. Copies of all the site plans prepared for each of the individual building lots shall be forwarded to the Office of the City Engineer and to the Planning Board at the time they are submitted to the Building Inspector for a Building Permit.
17. Prior to the execution of this Covenant, the Covenantor agrees to submit a work schedule, and a progress report every month after the commencement of work, to the City Engineer, with copies to the Planning Board, until said subdivision has been completed. Said progress reports shall be delivered to the Planning Board prior to the third Monday of each and every month.
18. If the City, by its Planning Board, determines that there is a violation of the applicable state laws, city ordinances, Planning Board Rules and Regulations and/or the terms and provisions of this Covenant, it shall seek a cease and desist order after proper application to a court of competent jurisdiction, and it shall seek any and all other equitable and legal relief it deems necessary. If in the opinion of the Covenantor, there has not been a violation of said applicable state laws, city ordinances, Planning Board Rules and Regulations, or the terms and provisions of this Covenant, nothing herein shall be construed as the Covenantor's consent to cease and desist from work on the Subdivision without Court order.
19. The Covenantor's applications, all plans and profiles, calculations, and other supporting data relating to the "Plan", state laws, city ordinances, Planning Board Rules and Regulations and all terms, provisions, and conditions of final approval of the "Plan" are incorporated herein by reference, as if set forth in full, except as expressly modified herein.
20. This Covenant shall take effect upon the approval of the "Plan".
21. Reference to this Covenant shall be entered upon said "Plan" and the Covenant shall be recorded with the "Plan". The Covenantor further agrees that it shall cause two certified copies of this Covenant as recorded at the Middlesex South District Registry of Deeds to be delivered to the City Solicitor's Office and the Planning Board Office, City Hall, Marlborough, Massachusetts within three business days of the date of recording.
22. The provisions of this Covenant are severable, and if any of these provisions shall be held to

be illegal or unconstitutional by any Court or competent jurisdiction, then the remaining provisions of this Covenant shall continue in effect.

EXECUTED AS A SEALED INSTRUMENT this _____ day of _____, 200_

Covenantor:

THE COMMONWEALTH OF MASSACHUSETTS

_____, ss.

_____, 200_

Then personally appeared the above-named _____ as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of said, before me.

Notary Public:

My Commission expires:

Approved and Accepted: _____, 200_
Marlborough Planning Board, City of Marlborough

